

Applicant or Patentee: Mich. Kiefer et al.

Serial or Patent No.: 08/320,127

orney
Docket No.: 23647-20007.20

Filed or Issued: October 7, 1994

For: NOVEL APOPTOSIS-MODULATING PROTEINS, DNA ENCODING THE PROTEINS AND METHODS OF USE THEREOF



VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS 37 CFR 1.9(f) AND 1.27(c) - SMALL BUSINESS CONCERN

I declare that I am

☐ the owner of the small business concern identified below:

☒ an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF CONCERN: LXR Biotechnology Inc.

ADDRESS OF CONCERN: 1401 Marina Way South, Richmond, CA 94804

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 13 CFR 121.12, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees to the United States Patent and Trademark Office, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled NOVEL APOPTOSIS-MODULATING PROTEINS, DNA ENCODING THE PROTEINS AND METHODS OF USE THEREOF by inventor(s) Michael C. Kiefer and Philip J. Barr described in

☐ the specification filed herewith with title as listed above.

☒ the application identified above.

☐ patent identified above.

If the rights held by the above identified business concern are not exclusive, each individual, concern or organization having rights in the invention must file separate verified statements averring to their status as small entities, and no rights to the invention are held by any person, other than the inventor, who would not qualify as an independent inventor under 37 CFR 1.9(c) if that person made the invention, or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d), or a nonprofit organization under 37 CFR 1.9(e).

Each person, concern or organization having any rights in the invention listed below:

☒ no such person, concern, or organization exists.

☐ each such person, concern or organization is listed below.

Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27)

I acknowledge the duty to file, in this application or patent, notification or any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING: Philip J. Barr

TITLE OF PERSON OTHER THAN OWNER: Executive Vice President, Research & Dev.

ADDRESS OF PERSON SIGNING: 1401 Marina Way South, Richmond, California 94804

SIGNATURE

DATE

1/20/95



#3

Attorney Docket No. 23647-20007.20

COMBINED DECLARATION AND POWER OF ATTORNEY
FOR CONTINUATION-IN-PART APPLICATIONAS A ~~BELOW-NAMED~~ INVENTOR, I HEREBY DECLARE THAT:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if more than one name is listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: NOVEL APOPTOSIS-MODULATING PROTEINS, DNA ENCODING THE PROTEINS AND METHODS OF USE THEREOF, the specification of which

(check one) ☐ is attached hereto
☒ was filed on October 7, 1994

as application serial no. 08/320,157 and was amended on (if applicable).

I HAVE REVIEWED AND UNDERSTAND THE CONTENTS OF THE ABOVE-IDENTIFIED SPECIFICATION, INCLUDING THE CLAIMS, AS AMENDED BY ANY AMENDMENT REFERRED TO ABOVE.

I acknowledge and understand that I am an individual who has a duty to disclose information which is material to the patentability of the claims of this application in accordance with Title 37, Code of Federal Regulations, §§ 1.56(a) and (b) which state:

"(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or

attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability."

I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below, and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) and (b) set forth above which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Application Serial No.: 08/160,067

Filing Date: November 30, 1993

Status (patented, pending, abandoned): pending

As to the subject matter of this application which is common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to said earlier application, or in public use or on sale in the United States of America more than one year prior to said earlier application. Said common subject matter has not been patented or made the subject of an inventor's certificate issued before the date of said earlier application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to said earlier

application; and the earliest application(s) for patent or inventor's certificate on said invention filed by me or my legal representatives or assigns in any country foreign to the United States of America is identified below, as well as all other such applications (if any) filed more than twelve months prior to the filing date of this application:

The priority of the earliest application(s) (if any) filed within a year prior to said pending prior application is hereby claimed under 35 U.S.C. § 119.

As to the subject matter of this application which is not common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to the date of this application, or in public use or on sale in the United States of America more than one year prior to the date of this application. Said subject matter has not been patented or made the subject of an inventor's certificate issued in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to the date of this application; and the earliest application(s) for patent or inventor's certificate on said subject matter filed by me or my legal representatives or assigns in any country foreign to the United States of America is identified below, as well as all other such applications (if any) filed more than twelve months prior to the filing date of this application:

The priority of the earliest application(s) (if any) filed within a year to this application is hereby claimed under 35 U.S.C. § 119.

I hereby appoint the following attorneys and agents to prosecute that application and to transact all business in the Patent and Trademark Office connected therewith and to file, to prosecute and to transact all business in connection with all patent applications directed to the invention:

Reid G. Adler - Reg. No. 30,988
Thomas E. Ciotti - Reg. No. 21,013
Patricia M. Drost - Reg. No. 29,790
Edward G. Durney - Reg. No. 37,611
Tyler Dylan - Reg. No. 37,612
Nancy Joyce Gracey - Reg. No. 28,216
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Stuart P. Kaler - Reg. No. 35,913
Paul C. Kimball - Reg. No. 34,641
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Paul F. Schenck - Reg. No. 27,253
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Cecily Anne Snyder - Reg. No. 37,448
E. Thomas Wheelock - Reg. No. 28,825

and:

Address all correspondence to:

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Address all telephone calls to: Susan K. Lehnhardt at 415-813-5600.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name Inventor: ¹²⁰Michael C. Kiefer

Signature: Michael C. Kiefer

Date 1/24/95

Residence: Clayton, California

Citizenship: U.S.A. ^{CA}

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Full Name Inventor: ²⁰⁰Philip J. Barr

Signature: Philip J. Barr

Date 1/20/95

Residence: Berkeley, California ^{CA}

Citizenship: United Kingdom

Post Office Address: 152 Hillcrest Road, Berkeley, California 94705